NOAA Fisheries Service Hatchery Listing Policy & Listing Decisions
Questions & Answers
June 16, 2005

What decisions did the agency announce today?

NOAA Fisheries Service's listing decisions are summarized in the attached table. The announcement today includes several related actions:

- Final policy on how hatchery fish will be accounted for in deciding whether a population is threatened or endangered under the ESA
- Final decision to maintain ESA listing of 15 salmon populations and add one new population to the threatened list (lower Columbia River coho). The decision also changed California coast coho from "threatened" to "endangered."
- The addition of more than 130 hatchery stocks to the ESA listings, as required by court ruling
- New "take" rules, to allow take of hatchery fish intended for harvest
- Six-month extension of a final decision on Oregon coast coho, to give the agency more time to consider a new analysis by Oregon, which concludes the coho are not at risk of extinction. Oregon coast coho are not now listed.
- Six-month extension of a final decision on 10 currently listed steelhead populations, to give the agency more time to resolve disagreements with the U.S. Fish and Wildlife Service over the inclusion of rainbow trout. Meanwhile, steelhead remain listed.

Questions about the Hatchery Listing Policy

What does the hatchery listing policy say?

The final policy establishes the criteria a hatchery stock must meet to be considered part of the same biological unit as a naturally spawning population; reaffirms that NOAA Fisheries Service will list biologically related hatchery stocks under the ESA when it lists the related naturally spawning population; establishes that NOAA Fisheries Service will consider the extinction risk of the entire biological unit, both naturally spawning populations and hatchery stocks, when it makes a listing decision; and adopts a policy that the agency will allow harvest of listed hatchery fish that are surplus to conservation needs.

How is the final policy different from what NOAA proposed last year?

The policy is substantially the same as what the agency issued last year, with a few clarifying changes made in response to scientific peer reviewers and the public. Some of the changes are technical. For example, the criteria for including hatchery fish in the same biological unit as naturally spawning fish was re-worded to be more clear, and the policy now refers to hatchery "stocks" rather than "populations." Other language changes strengthen the policy's emphasis on naturally spawning populations, for example by describing the "central intent" of the policy to be conservation of natural salmonid populations and the ecosystems upon which they depend.

Has this hatchery policy opened the door to eventually removing protection from fish and wildlife when there are lots of hatcheries, or zoos, or other artificial production programs?

No. This policy, and the way we have applied it in our listing decisions, recognizes that the long-term health of salmon populations depends not just on there being large numbers of fish, but also on the productivity, genetic diversity, and geographic distribution of the fish. In a May 14, 2004, letter to the U.S. Congress, the Undersecretary of Commerce for Oceans and Atmosphere emphasized that the "central tenet of the hatchery policy is the conservation of naturally spawning salmon populations and the ecosystems upon which they depend," and that NOAA did not believe that the purposes of the ESA would be satisfied by having all the salmon in an ESU in a hatchery.

If all the populations that were listed before are still listed, what difference does the hatchery listing policy make; haven't you just ignored the District Court's ruling?

Applying the hatchery listing policy did make a difference for some of the populations. In particular, we listed lower Columbia River coho as "threatened" rather than "endangered" because the presence of abundant hatchery fish lowers the immediate risk of extinction. In the proposed rule last year, we also proposed to change upper Columbia steelhead from "endangered" to "threatened" because of abundant hatchery fish.

We believe our policy and its application are entirely consistent with the District Court's 2001 ruling in Alsea Valley Alliance v. Evans. The *Alsea* court ruled that if we determine that hatchery fish are biologically part of a "distinct population segment," and that distinct population segment warrants listing under the ESA, all members of the population must be included in the listing – both naturally spawned and hatchery fish. The court did not rule on how the agency should determine whether the species is in danger of extinction or likely to become so in the foreseeable future. In evaluating extinction risk, we must consider all the factors that contribute to viability, not just sheer numbers of fish.

Questions about the Listing Decisions for 16 Salmon Populations

Have the listings changed from what was proposed last year?

There is one change. We proposed to list Sacramento River winter run Chinook as "threatened," but in this final determination have retained their previous "endangered" listing.

How have the listings changed from what they were previously (that is, before this status review)?

Before NOAA Fisheries Service undertook this new status review, only a few hatchery stocks were included in the listings. Now there are more than 130 hatchery stocks that are closely related

biologically to naturally spawning populations, are considered part of those populations for purposes of the ESA, and so are listed along with the naturally spawning fish. Other changes include the addition of lower Columbia River coho to the list of threatened species, and the change of central California coast coho from threatened to endangered.

Questions about Oregon Coast Coho

Why is NOAA Fisheries Service postponing its decision on Oregon coast coho?

When NOAA Fisheries Service scientists completed their review of the status of Oregon coast coho, they noted that the dramatically improved status of this population made it a very close call as to whether they are threatened. The state of Oregon has conducted its own review of the population's extinction risk, relying on new information, and concluded its long-term prospects for survival are higher than our study suggested. Earlier this year Oregon gave us its preliminary analysis, and NOAA Fisheries Service scientists provided extensive comment. Oregon has addressed those comments and provided a final analysis in May. We made Oregon's analysis available to the public for review and comment, and our scientists are also reviewing it. We intend to make a final decision before December 2005.

Doesn't this leave the coho without the important protections provided by the ESA?

When NOAA Fisheries Service proposed to list the coho last year, federal agencies began consulting with us to help shape their actions so they would not harm these fish. Oregon and federal fisheries managers have continued the stringent harvest restrictions that have contributed to the population's rebound, and Oregon has revised many of the hatchery practices that were thought to be harming the naturally spawned fish. Since the mid-1990s Oregon has moved aggressively to improve salmon habitat, and those efforts are starting to pay off.

Questions about Steelhead and Rainbow Trout

Why is NOAA Fisheries Service postponing its decision on 10 steelhead populations?

The scientific name for steelhead trout is *O. mykiss*. West Coast *O. mykiss* populations include both the large ocean-going steelhead and their smaller freshwater relatives, rainbow trout. NOAA Fisheries Service considers these related trout to be a single biological unit under the ESA, but had originally listed only the steelhead in 1996 and 1997 because the U.S. Fish and Wildlife Service has authority over freshwater fish. In 2001 a District Court in Oregon ruled that once NOAA decides a group of fish is a "distinct population segment" under the ESA, it must list the entire group. The court case involved hatchery fish, but the decision meant that NOAA had to reconsider its earlier listings of steelhead and decide whether it should have included rainbow trout.

Last year we proposed to add rainbow trout to our steelhead listings where the two forms occur together and have an opportunity to interbreed. On June 7, 2005, the Fish and Wildlife Service sent a letter stating its concerns about the factual and legal bases for our making this proposal final. In particular, the Fish and Wildlife Service questioned the biological relationship between the two forms and questioned our assessment of extinction risk where rainbow trout are present. The Fish and Wildlife Service suggested that we invoke the ESA provision allowing an extension of the final *O. mykiss* listing decisions "to allow for further scientific evaluation, data gathering, and debate among the scientific experts" within the two agencies.

Questions about the "Take" Prohibitions

What does the "take" rule do?

We have amended the ESA prohibition of "take" so that it applies only to fish with an intact adipose fin. This allows harvest to continue on hatchery fish that are not intended for conservation.

As required by the court's ruling, the agency is listing more than 130 hatchery stocks that are biologically closely related to the at-risk natural populations. Because most of these hatchery stocks are produced to meet tribal and other harvest commitments, the agency at the same time adopted a rule that prohibits "take" only of the naturally spawned fish, and those hatchery fish identified as having been produced for conservation. The so-called "4(d) rule" prohibits only take of fish with an intact adipose fin. Hatchery managers remove the adipose fin from hatchery fish before releasing them into the wild, to mark them as hatchery fish that can be harvested.

How did the District Court say you must treat hatchery fish and naturally spawning fish?

The *Alsea* court ruled that under the ESA we cannot list just part of a "distinct population segment," so if hatchery fish are biologically part of a threatened or endangered population, they must be listed too. But the court did not say all components of a population must be treated the same, either in making a listing decision or in protecting them once listed. Treating them the same would not be justified given their differing contributions to long-term survival of the population.

When a species is listed as "endangered," the ESA automatically prohibits all "take," which is defined broadly to include harm. But when a species is listed as "threatened," the ESA gives the agency discretion to adopt measures it "deems necessary and advisable." This gives the Secretary flexibility to tailor protections that reflect the biological condition of the population and the intended role of listed hatchery fish.

The majority of hatchery programs produce fish for harvest rather than for conservation, and protecting those fish is not necessary for conservation of the population. To the contrary, if too many hatchery fish are allowed to spawn naturally, it may harm the natural population. Removing some hatchery fish before they are allowed to spawn may thus be necessary for the conservation of some ESUs.

An alterative approach to conservation would be to simply produce fewer hatchery fish. While reducing hatchery production might be another option for addressing this threat, the hatchery production itself is in many cases important for redressing lost tribal treaty harvest opportunities (as well as meeting other social values). Allowing the continued production and harvest of hatchery fish balances the conservation needs of listed salmon and steelhead against other federal obligations.